

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

BEAUFORT REGIONAL CHAMBER OF
COMMERCE,

Plaintiff,

vs.

CITY OF BEAUFORT,

Defendant.

Civil Action No. 9:18-CV-2565-RMG

**CONFIDENTIAL SETTLEMENT
AGREEMENT AND RELEASE**

This Confidential Settlement Agreement and Release (“Settlement Agreement”) is made as of this 30th Day of May 2019 between the Beaufort Regional Chamber of Commerce (“the Chamber”) and The City of Beaufort (“the City”), each a “Party” and collectively the “Parties”. The use of the word Party or Parties, herein, shall be encompassing of the organizations mentioned above and of the constituent members therein.

WHEREAS, on or about 18 September 2018 the Chamber commenced a civil action against the City captioned Beaufort Regional Chamber of Commerce vs. City of Beaufort in the United States District Court for the District of South Carolina, No. 9:18-CV-2565-RMG (the “Litigation”);

WHEREAS, the Parties to the Litigation have agreed to amicably resolve and settle the claims and defenses in the Litigation; and

WHEREAS, the Parties wish to memorialize the terms of their agreement and to do so in this document; and

WHEREAS, the Parties acknowledge that they are entering into this Settlement Agreement voluntarily and after consultation with counsel of their choosing;

NOW, THEREFORE, for good and valuable consideration to be paid and transferred as set forth below, and intending to be legally bound, the Parties agree as follows:

RECITALS

The foregoing Recitals are expressly incorporated as part of the Settlement Agreement, and the Parties confirm and represent to one another that said Recitals are true and correct to the best of their knowledge, information, and belief.

NO ADMISSION OF LIABILITY

It is expressly understood that this Settlement Agreement and the settlement it represents are entered solely for the purpose of allowing the Parties to avoid further litigation. This Settlement Agreement does not constitute an admission by either Party of any wrongdoing, contractual obligation, or of any duty whatsoever, whether based in statute, regulation, common law, or otherwise, and each Party expressly denies that any liability or any such violation has occurred.

TERMS OF SETTLEMENT

1. The City agrees to transfer service mark registrations for the Beaufort Shrimp Festival (memorialized and attached herein as Exhibit B) and A Taste of Beaufort (memorialized and attached herein as Exhibit C) to the Chamber and agrees that the Chamber owns the right to produce both festivals subject to the terms set forth below. The City further agrees to cooperate in good faith and execute any additional documents or take any additional action that may be necessary in order to transfer the service marks to the Chamber.

2. The Chamber agrees that it shall not hold the Beaufort Shrimp Festival outside of Waterfront Park nor the Taste of Beaufort outside the city limits of Beaufort or the City shall have the right to purchase the Festival, service marks, any other intellectual property, ownership interests and goodwill related to these Festivals from the Chamber for ONE DOLLAR AND NO CENTS (\$1.00), unless another location is agreed to by the City.

3. The City agrees to grant the Chamber's annual requests to hold the festivals assuming the applications meet all required statutory or other objective criteria.

4. The City, by and through its insurance company, agrees to pay ONE-HUNDRED, FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00) to the Chamber for the resolution of all of the Chamber's claims made in this matter including but not limited to lost revenue for the 2018 Beaufort Shrimp Festival and the 2019 A Taste of Beaufort, and damages under the Lanham Act/42 U.S.C. §1983 without admitting any liability or fault by such a payment.

5. The Chamber agrees to (a) hold the annual Beaufort Shrimp Festival (which shall include a band, food vendors and a 5k or similar run or another mutually agreed upon event) and the A Taste of Beaufort Festival in the Beaufort Waterfront Park each year, and (b) apply for a permit with the City to hold the Beaufort Shrimp Festival by no later than February 15th and apply for a permit to hold the A Taste of Beaufort Festival by October 15th. If the Chamber does not apply for the permit to hold the Beaufort Shrimp Festival by February 15th of each year or does not apply for the permit to hold the A Taste of Beaufort Festival by October 15th of each year, then for the festival not applied for, the Chamber shall be required to sell all rights to that festival to the City for ONE DOLLAR AND NO CENTS (\$1.00). The City shall provide the Chamber with written notice and a ten (10) day opportunity to cure any failure to apply for a permit before this provision is triggered. In the event the Chamber requests permission, the City approves said request, and the Chamber is unable or chooses not to proceed with planning, organizing, or executing the necessary tasks to put on either Festival (other than for an act of GOD or other similar circumstances), the City shall have the right to purchase the Festival, service marks, any other intellectual property, ownership interests and goodwill related to the Festival from the Chamber for ONE DOLLAR AND NO CENTS (\$1.00).

6. Should there be another individual or entity interested in purchasing the Beaufort Shrimp Festival or A Taste of Beaufort or both, the sale may proceed subject to the City's first right-of-refusal. The City shall have the right of first refusal of any sale of either festival for the terms and conditions contained in a written contract of sale. The City shall have 30 days to exercise its right of first refusal, which shall begin when a written copy of a sales agreement is presented to the City. Any sale to a third party shall require compliance with the condition set forth in paragraphs 3, 5 and 7 of these terms. Any sale shall include the City as a third-party beneficiary of the contract for sale of the festival(s).

7. All criteria, conditions, and obligations (or changes thereto) required for the production of "Heritage Festivals" (Water Festival, Gullah Festival, Beaufort Shrimp Festival, and A Taste of Beaufort), with regard to use of the Waterfront Park, shall be applied and enforced equally to all Heritage Festivals.

8. The City agrees to re-join the Beaufort Regional Chamber of Commerce at the Innovate level of membership.

9. The City and Chamber shall issue a Joint Statement to the press as a part of resolving the dispute. A copy of the statement is attached as Exhibit A.

NON-DISPARAGEMENT

Parties jointly agree not to disparage each other or the members of each other's executive staff, boards or council.

CONFIDENTIALITY

Except for the Joint Statement set forth in Exhibit A and Terms 3, 5, and 7 which would only be if triggered by the events in Term 6, this settlement shall be confidential to the extent allowed by law. The Parties agree that this Settlement Agreement, as well as the nature and terms of this settlement and the subject matter thereof, will be forever treated as confidential and the

parties shall make no voluntarily disclosure or reference to the terms of this Settlement Agreement (other than the Joint Statement) to any person or entity, except to their attorneys and, as necessary, tax preparers, provided that each such person agrees to be bound by the confidential nature of this Settlement Agreement. The Parties and their counsel may also make such disclosures pursuant to court or administrative order, subpoena, or as otherwise may be required by law. The parties agree that confidentiality of the Settlement Agreement is an important element of the consideration for and inducement for the parties to enter into this Settlement Agreement.

TAX CONSEQUENCES

The Parties make no representations regarding the Settlement Agreement's tax consequences. Each Party agrees that it will not assert a claim against the other Party for the payment or reimbursement of any tax consequences resulting from any payment made pursuant to this Settlement Agreement.

SUFFICIENT CONSIDERATION; RELEASE OF CLAIMS

The Parties acknowledge that the consideration provided to the Chamber under this Settlement Agreement is sufficient. In consideration for the payments and exchanges herein provided, the Parties, to the maximum extent permitted by law, hereby irrevocably and unconditionally releases and discharges each other and each parties officers, officials, directors, attorneys, employees, and past or present predecessors therein, and any person or entity acting through or in concert with any of the preceding persons or entities (herein known as "Releasees") from any and all actions, claims, demands, debts, reckonings, contracts, agreements, covenants, damages, judgments, executions, liabilities, appeals, obligations, attorney's fees, and causes of action from the beginning of time to the date of this Settlement Agreement, known or unknown, asserted or unasserted, arising out of this action, including but not limited to all claims arising under: the United States Constitution; the South Carolina Constitution; 15 U.S.C §1125; 42 USC

§1983; SC Code Ann. §15-78-10, et seq.; SC Code Ann. §39-5-10, et seq.; and South Carolina Common Law. This release excludes claims that cannot be waived by law and claims for enforcement of this Settlement Agreement.

DISMISSAL OF LITIGATION

Within 10 days after receipt of the settlement payment and transfer of the service marks, the Chamber and its counsel shall take any necessary actions to ensure that the Litigation is dismissed in its entirety, with prejudice and without costs or fees. The City will cooperate with the Chamber in securing the dismissal of the Litigation as appropriate.

ENTIRE AGREEMENT

This Settlement Agreement comprises the entire agreement between the Parties and supersedes any and all prior oral and written agreements between them. This Settlement Agreement may not be altered, amended, or modified except by a further writing signed by the Parties.

CHOICE OF LAW

The validity and construction of this Settlement Agreement shall be governed by the laws of the State of South Carolina, without regard to the principles of conflicts of laws. Any action to enforce this Settlement Agreement shall be brought only in the United States District Court District for the District of South Carolina, Beaufort Division.

NO INTERPRETATION OF AMBIGUITY AGAINST THE DRAFTER

This Settlement Agreement has been negotiated and prepared by both Parties and their counsel. If any of the Settlement Agreement's provisions require a court's interpretation, no ambiguity found in this Settlement Agreement shall be construed against the drafter.

OPPORTUNITY TO CONSULT LEGAL COUNSEL

The Parties confirm that they have reviewed and considered this Settlement Agreement and consulted with their attorneys regarding the terms and effect thereof.

AUTHORITY TO SETTLE

Each Party represents and warrants that the person signing this Settlement Agreement has authority to bind the Party and enter into the Settlement Agreement.

COUNTERPARTS

This Settlement Agreement may be executed in two or more identical counterparts, all of which constitute one and the same Settlement Agreement. Facsimile or other electronically-transmitted signatures on this Settlement Agreement shall be deemed to have the same force and effect as original signatures.

William Prokop, City Manager Date
City of Beaufort

 6.13.2019

Blakely Williams, CEO Date
Beaufort Regional Chamber of Commerce

William B. Harvey, City Attorney Date
Harvey & Battey, PA

 6/12/19

Cliff Mervicka, Board Chairman Date
Beaufort Regional Chamber of Commerce

EXHIBIT A

JOINT STATEMENT TO THE PRESS

The City of Beaufort and the Beaufort Regional Chamber of Commerce have amicably resolved the litigation related to ownership of the trade/service marks for the “Beaufort Shrimp Festival” and “A Taste of Beaufort” festival. As part of the resolution, the City is returning the service marks it registered for both festivals to the Chamber, and the Chamber will continue to produce the festivals we have all come to know and love each year. The Chamber and the City look forward to a new chapter in their relationship, working together for the businesses and residents of this community.